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88-1277

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1988

No._____

STANLEY V. TUCKER,

Petitioner

-v-

CONNECTICUT NATIONAL BANK, NEIL E. ATLAS, BOURKE G SPELLACY & UPDIKE, KELLY & SPELLACY, P.C.

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE SECOND CIRCUIT COURT OF APPEALS

STANLEY V. TUCKER
Petitioner
Box 35
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52 pp

QUESTIONS PRESENTED

1. Did 2nd CA violate This Courts rule that property cannot be seized without notice of defenses?

2. Did 2nd CA decide important constitutional question never before decided by this court, i.e. Constitutionality of Ct. P.B. 504 -510?

3. Did 2nd CA violate this courts rule that federal courts have jurisdiction over challenges to state court rules?

4. Did 2nd CA violate its own rule that federal courts have jurisdiction over constitutional issues not litigated in state court?

5. Did 2nd CA conflict with 9th CA & Columbia CA not granting Pro Se leave to amend and statement of amendments needed?

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No _____

STANLEY V. TUCKER,

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-v-

CNB (short title)

PETITION FOR A WRIT OF CERTIORARI TO
THE SECOND CIRCUIT COURT OF APPEALS

Petitioner prays that a writ of certiorari issue review the judgment of the 2nd CA made Nov.2, 1988 dismissing Petitioners Appeal. Timely Motion filed to Certify federal question & denied Nov 2,1988

CITATION TO OPINIONS BELOW

To the knowledge of this Petitioner 2nd C.A. decisions are not reported. The decisions printed in Appendix D - E - F.

JURISDICTION

The judgment of the Second Circuit Court of Appeals entered Nov 2, 1988. The jurisdiction of this court is invoked under Title 28 USC 1254 (1)

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves a denial of procedural due process and equal protection of the laws the 5th and 14th amendments to the US Constitution, as set forth in Appendix B.

This case involves Conn GS 51-14 which limits state judges to rules of practice. Appendix A.

This case involves challenge to Conn P.B. 504-510 without notice of defenses prior Appendix C. to seizure of private property.

STATEMENT OF THE CASE

This action challenges the constitutionality of Conn. Practice Book 504-510 which permit the seizure of private property without giving debtor notice of

his defenses.

This action challenges Conn P.B. 504-510 on due process grounds as affecting substantial rights and being in violation of Conn. GS 51-14 limiting the state judges to "rules of procedure only"

Petitioner raised his challenge in the District Court of Conn. by civil rights complaint 8-12-87 No amendment allowed. Trial judge dismissed the complaint on grounds he had no jurisdiction and the Petitioner "could have litigated these issues in state court".

On appeal to the 2nd CA Petitioner timely filed his Brief and Appendix. The 2nd CA dismissed on hearsay allegations repudiated under oath by this Petitioner.

Petitioner filed timely motion for certification based on 9th CA decisions reported in news media. Petitioner asked for leave to amend with Trial Court directed to state amendments needed. Certification denied 11-2-88

Thus the constitutional challenge properly raised

in DC and 2nd CA and rejected on erroneous grounds.

FACTUAL BACKGROUND

The respondent bank was able in state court on hearsay motions to obtain a rent receiver under Conn P.B. 504-510 without ever giving this Petitioner notice of his defenses. Bank used the rent receiver for years to build up a mass of unpaid taxes and mortgage and with neglected conditions to seek "strict foreclosure" by low value on properties.

Bank had no right to rents as property worth double $150,000 mortgage balance and sold April 1986 to avoid foreclosure $840,000 Meanwhile Petitioner lost $1,200,000 in rents.

SUBSTANTIAL REASONS FOR GRANTING THE WRIT

I. PETITIONER PRECLUDED FROM RAISING THIS CONSTITUTIONAL CHALLENGE IN CONN SUPREME CT

It is axiomatic that only Connecticut of all the states follows the Conn. Practice Book.

The Connecticut Practice Book limits the Connecticut Supreme Court to review issues raised in the lower court upon trial and almost with no exceptions the court follows this rule.

Connecticut Practice Book Sec 4185 (3065)

Sec. 4185. (Formerly Sec. 3063). Errors Considered

The supreme court shall not be bound to consider a claim unless it was distinctly raised at the trial or arose subsequent to the trial. The supreme court may in the interests of justice notice plain error not brought to the attention of the trial court.

State v Reddick
197 Conn at 125

... The defendant has suggested no exceptional circumstances to warrant departure from the general rule that limits appellate review of all issues, even constitutional issues, to those on which the trial court has had an opportunity to rule. Practice Book § 3063; *Knight* v. *Bourbeau,* 194 Conn. 702, 704 n.3, 485 A.2d 919 (1984); *Cain* v. *Moore,* 182 Conn. 470, 472, 438 A.2d 723 (1980), cert. denied, 454 U.S. 844, 102 S. Ct. 157, 70 L. Ed. 2d 129 (1981).

Scholes Agency v Mitchell
191 Conn at 357 See Note 5

"Altho plaintiff briefed an added issue... Plaintiff did not raise issue in trial court... Appellate review therefore precluded"

The Petitioner filed his answer to the state court foreclosure Nov 14, 1977. The federal law changed in 1983 when the Conn. District Court following a line of cases from this court struck down the IRS Intercept Statute for failure to give debtor notice of defenses prior to seizure of property.

Nelson v Regan
560 F Supp 1101
Jan 14, 1983

Constitutional Law 286
Internal Revenue 4973
"Federal state intercept program, under which federal income tax refunds may be transferred to state to extent of taxpayer's past-due support obligations, violated taxpayer's due process rights, in that preintercept notice and postintercept notice failed to meet due process requirements for notice, as neither mentioned possible defenses individual might have to interception of"

See also wage execution. Wright v Tanezio 3-11-83
USDC Conn No 81-353

Conn GS 52-361 fails to provide prior to wage execution... a speedy adequate and meaningful opportunity to be heard at a meaningful time"

Connecticut law on wage executions now amended to ive debtors a form with notice of defenses and pportunity to be heard on these defenses.

ee companion case challenging on same grounds Conn RS intercept statute.

This Petitioner filed his state court pleadings in 1977 based upon state law as it existed. Petitioner filed a sworn statement in lower court that he could not and did not litigate issues brought up in this cases because the law did not exist in 1977. Federal law on notice of defenses to debtors first arose in Conn. in 1983 and while in his appeal this Petitioner tried to raise this issue the Connecticut Supreme Court would not and did not address this issue as it only reviews matters or issues brought up in the Trial Court.

The claim by respondents that this action is a re-litigation is a false claim as is the statement by the District Court that this matter could have been litigated in the state court. The state court proceedings started in 1977 went to final judgment in 1985 and nothing more can be litigated therein.

Wright v Tanezio
USDC Conn No 81-353 3-11-83

Nelson v Regan
560 F Supp 1101

These fundamental cases flow from Mathews v Eldridge, 424 US 319, just as this action.

"Due process requires consideration of:

First - Private interest affected by state
Second - Risk of error in procedures
Third - Government interest in added procedural requirements"

See also cases like Memphis L & P v Craft 436 US I 1978 at p I

"3. Petitioners deprived respondents of an interest in property without due process of law. Pp 12-22

(a) Notice in a case of this kind does not comport with constitutional requirements when it does not ad-vise the customer of the availability of an adminis-trative procedure for protesting a threatened termi-nation of utility services as unjustified, and since no such notice was given respondents, despite "good faith efforts" on their part, they were not accorded due notice. Pp 13-15

(b) Due process requires, at a minimum, the provision of an opportunity for presenting to designated personnel empowered to rectify error a customer's complaint that he is being overcharged or charged for services not rendered, and here such a procedure was not made available to respondents. The customer's interest in not having services terminated is self-"

'evident, the risk of erroneous deprivation of services is not insubstantial, and the utility's interests are not incompatible with affording notice and procedure described above. Mathew v. Eldridge, 424 U. S. 3;9 Pp 16-19"

Where was the 2nd CA in 1978? Did the Justices read the U.S. Reporter? It was not held by this court to be Craft's duty to litigate unknown rights but the duty of Memphis L & P to provide him with opportunity and personnel to correct errors in Craft's complaint.

So here too the 2nd CA wrong in holding or upholding Tucker had to litigate unknown rights in state court - instead it is claimed to be duty of state court judges to notice Tucker of his defenses and give him a chance at a meaningful hearing.

What do the rules do instead. See Appendix C PB 506 allows appointment of rent receiver on hearsay by plaintiff bank's attorney.

II. 2nd CA VIOLATED THIS COURT'S RULING UNKNOWN LAW CAN BE LITIGATED IN FOLLOW ON CASE ONCE LAW IS ESTABLISHED

The 2nd CA upheld District Judge Dorsey's holding that Tucker "could have litigated" unknown law in the state court foreclosure action . But this court has long ago held such a burden cannot be imposed on attorneys let alone pro se litigants who need and are entitled as a due process right to a chance to amend and a statement by District Court of amendments

Curtis Publishing Co v Butts
388 US 143 1966

"Butts makes two arguments in support of his contention that Curtis' failure to raise constitutional defenses amounted to a knowing waiver. The first is that the general state of the law at the time of this trial was such that Curtis should, in the words of the Fifth Circuit majority, have seen "the handwriting on the wall." 351 F. 2d, at 734. We cannot accept this contention. Although our decision in *New York Times* did draw upon earlier precedents in state law, *e. g.*, *Coleman* v. *MacLennan*, 78 Kan. 711, 98 P. 281, and there were intimations in a prior opinion and the extra-judicial comments of one Justice,' that some applications of libel law might be in conflict with the guarantees of free speech and press, there was strong precedent indicating that civil libel actions

were immune from general constitutional scrutiny.' Given the state of the law prior to our decision in *New York Times*, we do not think it unreasonable for a lawyer trying a case of this kind, where the plaintiff was not even a public official under state law, to have looked solely to the defenses provided by state libel law."

Just like Curtis this Petitioner looked only at established state law in 1977 and after this new federal law established in 1983 commenced timely this action in the District Court of Connecticut.

Curtis Pub Co v Butts
388 US 144 1966

" First, as a general matter, we think it inadvisable to determine whether a "right or privilege" is "known" by relying on information outside the record concerning the special legal knowledge of particular attorneys. Second, even a lawyer fully cognizant of the record and briefs in the *New York Times* litigation might reasonably have expected the resolution of that case to have no impact on this litigation, since the arguments advanced there depended so heavily on the analogy to seditious libel. We think that it was our eventual resolution of *New York Times*, rather than its facts and the arguments presented by counsel, which brought out the constitutional question here. We would not hold that Curtis waived a "known right" before it was aware of the *New York Times* decision. It is agreed that Curtis' presentation of the constitutional issue after our decision in *New York Times* was prompt."

Was the 2nd CA wrong imposing on this poor pro se litigant a higher standard than that imposed by This Honorable Court on professional attorneys?

May this action be reversed on sound doctrine, in Curtiss, Supra.

III. 2nd CA VIOLATED ITS OWN RULE THAT CONSTITUTIONAL ISSUES NOT LITIGATED IN STATE COURT CAN BE LITIGATED LATER IN FEDERAL COURT

The 2nd CA has long followed the Garguil/Lombard doctrine that says to apply res judicata to constitutional issues that "might have been litigated in state court" is a draculone concept that does not apply to constitutional issues.

Gargiul v Tompkins
794 F 2d at 662
2nd CA 1983

1. Judgment ⇐828(3.42)

While a section 1983 plaintiff may not relitigate constitutional claims actually determined in a prior state court proceeding, prior state court proceeding does not bar federal court consideration of constitutional claims not actually litigated and determined in that proceeding. 42 U.S.C.A. § 1983.

A constitutional challenge can never succeed if dismissed..."because it might have been litigated in state court" On pages 4-9 supra Petitioner shows he was precluded from litigating federal issue by Rule 4185 Practice Bk.

Lombard v Bd of Education
502 F 2d 631
2nd CA 1977

1. Judgment ⇐828(3.37)

Prior state proceedings in which teacher contested termination of his employment on ground that board of education had failed to comply with its own bylaws and had acted illegally in terminating teacher's probationary appointment after expiration of probationary term did not bar teacher's subsequent civil rights action against board of education and school principal based upon alleged denial of procedural due process

In the 2nd CA this Petitioner was subjected to the practices of Justice Feinberg's "gas chamber for pro se" litigants. His briefs citing cases from this Honorable United States Supreme Court were not read, his cases ignored. Oral argument denied. His briefs & Appendix cycled and re-cycled in mails. His motion for Certification denied as to his due process rights. The motion to dismiss the appeal was based on hearsay REPUDIATED UNDER OATH BY THIS PETITIONER.

IV. 2ND CA VIOLATED THIS COURT's RULE THAT FEDERAL JURISDICTION EXISTS OVER CHALENGES TO COURT RULES

The District Court dismissed on grounds it lacked jurisdiction to review the state courts judgment whereas this Petitioner asked the District Court to REVIEW AND HOLD UNCONSTITUTIONAL THE STATE COURT RULES.

This is a major error on the part of the judge that he did not see the distinction the Honorable US Supreme Court has made in a line of cases attacking on constitutional grounds state court or state bar rules. This is an all important distinction that the attack is on the state court in its legislative capacity and not in its judicial capacity.

Lathrop v Donahue
357 US at 820 1960

> "Integration of the Bar in Wisconsin bore no resemblance to adjudication. The State Supreme Court's action disposed of no litigation between parties. Rather the court sought to regulate the profession by applying its orders to all present members of the Bar and to all persons coming within the described class in the future. Cf. *Hamilton* v. *Regents, supra*, p. 258; *King Manufacturing Co.* v. *City Council, supra*, p. 104. As such, the action had the characteristics of legislation. We conclude that the appeal is cognizable under § 1257 (2). We therefore proceed to the consideration of the merits."

In 1976 This Honorable Court upheld a 1st Amendment challenge to Arizona State Bar prohibiting attorney advertising.

Bates v State Bar of Arizona
433 US at 384

" The constitutional issue in this case is only whether the State may prevent the publication in a newspaper of appellants' truthful advertisement concerning the availability and terms of routine legal services. We rule simply that the flow of such information may not be restrained, and we therefore hold the present application of the disciplinary rule against appellants to be violative of the First Amendment.

The judgment of the Supreme Court of Arizona is therefore affirmed in part and reversed in part."

It is so ordered.

In this action the law changed in 1983 to define and affirm due process rights to notice of defenses where their property seized by creditor whereas this Petitioner faced foreclosure under state court rules adopted without jurisdiction and that deny due process of law permitting a creditor bank to seize rents without notice of defenses to debtors 100% ignorant of their defenses. This Honorable Court has again and again upheld jurisdiction over constitutional challenges to state court rules adopted by the Judges in their legislative capacity and not in their judicial capacity.

See E.G. Supreme Court of Virginia v. Consumers Union
446 US 719, 731
Lathrop v Donohue, 367 US at 566
D.C. Court of Appeals v Feldman
460 US at 485 1982

" During the course of its opinion, the Court of Appeals stated:

> "The United States District Court, in denying [the plaintiff] relief, declared that there is a subtle but fundamental distinction between two types of claims which a frustrated bar applicant might bring to federal court: The first is a constitutional challenge to the state's general rules and regulations governing admission; the second is a claim, based on constitutional or other grounds, that the state has unlawfully denied a particular applicant admission. The Court held that while federal courts do exercise jurisdiction over many constitutional claims which attack the state's power to license attorneys involving challenges to either the rule-making authority or the administration of the rules, . . . *such is not true where review of a state court's adjudication of a particular application is sought.* The Court ruled that the latter claim may be heard, if at all, exclusively by the Supreme Court of the United States." *Id.*, at 597 (em-

"The Court of Appeals for the Tenth Circuit in Doe v. Pringle, supra, properly emphasized the distinction between general challenges to state bar admission rules and claims that a state court has unlawfully denied a particular applicant admission. We have recognized that state supreme courts may act in a nonjudicial capacity in promulgating rules regulating the bar. See, e.g.., Supreme Court of Virginia v. Consumers Union, 446 U. S. 719, 731 (1980); Lathrop v. Donohue, 367 U.S. at 827 (plurality opinion); In re Summers, 325 U. S. at 566.

Challenges to the constitutionality of state bar rules, therefore, do not necessarily require a United States district court to review a final state-court judgment in a judicial proceeding. Instead, the district court may simply be asked to assess the validity of a rule promulgated in a nonjudicial proceeding. If this is the case, the district court is not reviewing a state court judicial decision. In this regard, 28 U. S. C. & 1257 does not 'act as a bar to the district courts consideration of the case and because the proceedings giving rise to the rule are nonjudicial the policies prohibiting United States district court review of final state court judgments are not implicated.

United States district courts, therefore, have subject matter jurisdiction over general challenges to state bar rules, promulgated by state courts in nonjudicial proceedings, which do not require review of a final state court judgment in a particular case.

D.C. Court of Appeals v Feldman
460 US at 485 1982

See also Brown v Board of Bar Examiners, 623 F 2d 605 (CA9 1980).

The District Court erred because the use of unconstitutional rules PB 504-510 is made in foreclosure actions by banks and attorneys greedy to seize property by any means fair or foul the District Court thought he was asked to review state court judgments. SUCH IS NOT THE CASE! The District Court was asked to review the constitutionality of Conn Practice Book S 504-510; state court judgments merely an illegal by product of rules that violate the Constitution and Amendments thereto.

V. 2ND CA VIOLATED THIS COURT's RULE ON STANDING.

The ruling below that Petitioner had no standing violated this court's rule.

Simon v Eastern Ky, Welfare Rights Org 426 US at 26 1975

> **"federal plaintiffs must allege some threatened or actual injury resulting from putative illegal action" Linda R S v Richard D 410 US 617**

The Petitioner alleged continuing damages due to loss of $1,200,000 in rents and loss of title by forced sale $300,000 under market price.

Moreover this Petitioner wanted to amend his complaint into two counts, one a count for facial unconstitutionality of Conn P B. 504-510 and two a count for unconstitutionality as applied to this Petitioner by the Bank - CNB in the state foreclosure.

Amendment in federal court is liberality under Rule 15, FRCP, and a Due Process right to Pro Se litigants under doctrine from the 9th CA and Columbia CA. But Petitioner was denied this valuable right by the 2nd C.A.

106 Mile Transport Asso v Koch
656 F Supp at 1480

> "[2] A plaintiff, therefore, must demonstrate that he has suffered some "distinct and palpable injury," that the injury is the result of the defendant's allegedly illegal conduct and that his or her injury is likely to be redressed by relief afforded by the court. *Id.; Matter of Appointment of Independent Counsel*, 766 F.2d 70 (2d Cir.) *cert. denied*, — U.S. —, 106 S.Ct. 569, 88 L.Ed.2d 554 (1985). "

Eldridge v Block
832 F 2d at 1135

" In exercising its discretion with regard to the amendment of pleadings, "a court must be guided by the underlying purpose of Rule 15—to facilitate decision on the merits rather than on the pleadings or technicalities." *United States v. Webb*, 655 F.2d 977, 979 (9th Cir.1981). This court has noted "on several occasions .... that the 'Supreme Court has instructed the lower federal courts to heed carefully the command of Rule 15(a), F[ed].R.Civ.P., by freely granting leave to amend when justice so requires.'" *Gabrielson v. Montgomery Ward & Co.*, 785 F.2d 762, 765 (9th Cir. 1986) (quoting *Howey v. United States*, 481 F.2d 1187, 1190 (9th Cir.1973) (citations omitted). Thus "Rule 15's policy of favoring amendments to pleadings should be applied with 'extreme liberality.'" *Webb*, 655 F.2d at 979 (citing *Rosenberg Brothers & Co. v. Arnold*, 283 F.2d 406 (9th Cir. 1960) (per curiam)).

[1] This policy is applied even more liberally to pro se litigants. Thus in *Armstrong v. Rushing*, 352 F.2d 836 (9th Cir. 1965), this court established that a pro se litigant bringing a civil rights suit must have an opportunity to amend the complaint to overcome deficiencies unless it is clear that they cannot be overcome by amendment. 352 F.2d at 837 (pro se litigant entitled to procedural protections, including right to amend complaint unless futile); *see Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir.1987); *Potter v. McCall*, 433 F.2d 1087, 1088 (9th Cir.1970) (per curiam). "

VI. ABSTENTION DOCTRINE NOT APPLICABLE

The abstention doctrine lastly pronounced in Pennzoil Co. v Texaco, 55 LW 4457, does not apply here because Tucker no longer has a state court action pending in which to seek his remedy. The foreclosure case in state court had pleadings last filed in 19 and went to final judgment in 1985. No action left to raise these issues of newly formed law in. No longer is appeal possible to the Connecticut Supreme Court but only on discretionary petition for Certification, a matter of discretion to the state court under PB 4126-4133. Regularly the Conn. Sup Ct. dismisses challenges to court rules.

Tucker v American Ins
3 Conn App at 399

> "It would seem that the policy of requiring application for permission to bring suit against the receiver in the original court is so firmly established in this State that a change in the policy should be enunciated either by our Supreme Court or prescribed by statute."

Tucker v American Ins
196 Conn 802 1985

> "The plaintiff's petition for certification for appeal from the Appellate Court, 3 Conn. App. 397, is dismissed."

Appellate Court will not rule without guidance & Sup Ct dismisses challenges to rules. Abstention has no place in this action.

This Honorable Court established a three prong test for Younger abstention that was recently applied by the 9th CA on Sept 9th, 1988 in:

Beltran v California & United Farm Workers
9th CA Nos 87-5942 and 87-5943

" We review *de novo* the district court's refusal to abstain under *Younger*. *Polykoff v. Collins*, 816 F.2d 1326, 1332 (9th Cir. 1987); *Fresh Int'l Corp. v. Agricultural Labor Relations Board*, 805 F.2d 1353, 1356 & n.2 (9th Cir. 1987).

Younger abstention embodies "a strong federal policy against federal-court interference with pending state judicial proceedings, absent extraordinary circumstances." *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982). In *Fresh Int'l*, 805 F.2d at 1357-58, we summarized the requirements of *Younger* abstention:

> Under the three-pronged test announced by the Supreme Court in *Middlesex* and applied in *Dayton*, abstention is appropriate in favor of a state proceeding if (1) the state proceedings are ongoing; (2) the proceedings implicate important state interests; and (3) the state proceedings provide an adequate opportunity to raise federal questions.

(citations omitted). This case meets each requirement. Consequently, we hold that the district court erred in refusing to abstain. We consider each criterion in turn. "

Applying this Middlesex test to this case we find abstention not applicable.

This Action	Test 1- State proceedings final 1985 Test 2- No state interest in rent receiver rules of court Test 3- State proceedures inadequate

Conn. uses hearsay as approved in PB 506 (see Appendix C) for appointing and keeping rent receivers so no "meaningful" hearing possible for property owners.

Sup Ct will no longer grant certiorari to review constitutionality of rules. See P 5 Supra

VI RES JUDICATA DOES NOT APPLY BECAUSE FEDERAL LAW CHANGED AND ISSUES AND PARTIES ARE DIFFERENT

With Santa Claus generosity, the District Judge ruled res judicata applied without any showing the facts to be identical the causes of action to be identical and ignoring that the federal law changed since pleadings filed in the four state court foreclosure actions in 1981.

FRCP Rule 8 (c) "In pleading...a party... shall set forth affirmatively..res judicata.."

While in their motion to dismiss defendants raise defense of res judicata their motion unsworn and in opposition Petitioner filed sworn statement that in state court he did not plead the constitutional issues raised herein and that federal law on constitutional issues arose after state court pleadings closed. THE CLAIMED RES JUDICATA DISPUTED UNDER OATH AND NO EVIDENCE TAKEN TO RESOLVE THE DISPUTE - surely the District Court a Santa Claus to the bank and defendants.

Jones v Miller
2 RFD 479 — "Motion to Dismiss on grounds of res judicata denied where facts insufficient to establish question without further facts."

In this action the facts needed to settle the dispute never taken into evidence.

Davis v US Steel
688 F 2d 166
Certiorari Denied
460 US 1014 — "Res Judicata affirmative defense, party claiming it bears burden of proof"

Defendants offered no proof on their disputed defense.

U. S. v Harrison County, Mississippi
399 F 2d 485
Re-Hearing Denied 414 F 2d 787
Certiorari Denied
397 US 918

"In order to sustain plea of res judicata there must be identity of things such as identity of cause of action, identity of persons and parties to the suit, identity of quality and character of person against whom claim is made"

BUT STATE COURT FORECLOSURE DOES NOT MEET THIS TEST.

1. The issue in state court was the state law claims to permit foreclosure.
2. This issue in this case is the unconstitutionality of CT PB 504-510.
3. The defendants in state court include all lien holders not parties to this action.
4. The parties to this action include attorneys who applied the unconstitutional rules to seize property in violation of Constitution.

Muchard v Bereman
307 F 2d 368
Certiorari Denied
371 US 982

"Res Judicata is no defense where between the 1st and 2nd judgment law changed creating a different situation"

The decisions rendered in federal court in Wright, supra, and Nelson, supra (P 6,7 brief) changed law in 1983 to provide a sound legal basis for this federal complaint. That law did not exist in 1977 when state court pleadings closed.

VII. 2ND CA CONFLICT WITH 9TH CA AND COLUMBIA CA ON DUE PROCESS RIGHTS OF PRO SE TO AMEND

In its motion to dismiss the 2nd CA conflicts with 9th and Columbia CA. In its denial of Motion for Certification of federal question on November 2, 1988 the 2nd CA reaffirmed its postion as a GAS CHAMBER FOR PRO SE allowing judgment to enter on unsworn hearsay by the Respondents REJECTED UNDER OATH BY PETITIONER.

Karim-Panahi v Los Angeles Police Dept
839 F 2d 621 9th CA February 1987

> "in pro se civil rights cases court must construe pleading liberally and must afford plaintiff benefit of any doubt; moreover before dismissing pro se complaint for failure to state a claim, district court must give plaintiff statementof complaint's deficiencies. FRCP 12(b)(6) 42 USC 1983."

While the motion to dismiss granted was for failure to state a claim the Trial Judge did not use this ground but used grounds of HIS OWN INVENTION all without leave to amend, without notice.

Noll v Carlson
809 F 2d 1446 at 1448

> " The rule favoring liberality in amendments to pleadings is particularly important for the pro se litigant. Presumably unskilled in the law, the pro se litigant is far more prone to making errors in pleading than the person who benefits from the representation of counsel. Indeed, the Supreme Court has held that allegations of a pro se complaint are held to less stringent standards than formal pleadings drafted by lawyers. *Haines v. Kerner*, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972) (Per Curiam); *see also Maurer v. Individually and as Members of Los Angeles County Sheriff's Dept.*, 691 F.2d 434, 437 (9th Cir.1982); *Gillespie v. Civiletti*, 629 F.2d 637, 640 (9th Cir.1980). "

This Petitioner would have been delighted if the 2nd CA had reversed with directions to Trial Court to state amendments needed because surely he would have made those amendments.

Broughton v Cutter Labs
622 F 2d at 459

> **" State prisoner was entitled to an opportunity to amend his pro se civil rights complaint so as to attempt to allege facts sufficient to support an action for deliberate indifference to his medical needs; while it was a close question as to whether his complaint was frivolous, dismissal of his complaint was inappropriate. "**

In the lower court this Petitioner was dismissed on grounds of lack of jurisdiction over constitutional challenge to state court rules and on lack of standing although he alleged continuing damages. If he needed a statement of amendments needed he is the first person to admit it and to welcome such a statement.

This case is of importance to all property owners in Connecticut where annually thousands of properties are foreclosed without due process of law. A constitutional challenge can never succeed if dismissed..."because it might have been litigated in state court.."

Bretz v Kelman
773 F 2d at 1027

> "[1] After he was exonerated on the allegedly framed charges, Bretz filed pleadings, which, when liberally construed, allege a cause of action under 42 U.S.C. § 1983 and § 1985.[1] The district court, treating the papers as pleadings which attempted to federalize a routine state tort claim for malicious prosecution and slander, dismissed the claim. A divided panel of this court affirmed. *Bretz v. Kelman*, 722 F.2d 503 (9th Cir.1983), *withdrawn*, 729 F.2d 613 (9th Cir.1984). We took this case en banc along with two other § 1983 prisoner claims because of the importance and complexity of the questions and the doctrinal ambiguity which exists in this circuit over application of *Parratt v. Taylor*, 451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981).[2] "

The 2nd CA is in head on conflict with the Columbia CA in holding in a line of cases that Summary Judgement cannot be granted on a Pro Se litigant without giving an explanation of requirements of summary judgement along with leave to amend and time to make the amendments. Summary Judgement, the next step

after a motion to dismiss, is now subject to the same Due Process clause.

Ham v Smith
653 F 2d at 631
Columbia CA
1981

Conclusion

We remand to the district court for fresh consideration of the Government's summary judgment motion. After the Government has submitted an adequate Statement of Material Facts, the district court should explain the nature of the summary judgment motion to Ham and should allow him sufficient time to respond. As noted above, we express no opinion on the merits of the Government's motion.[9] Consideration of the merits here, as in the district court, should await a full airing of the arguments of both parties.

Reversed and remanded.

Philips v US Bd of Parole
352 F 2d at 712
Columbia CA 1965

3. Federal Civil Procedure ⊂=2531

It would be unfair to apply requirements of Federal Rule of Civil Procedure dealing with summary judgment with strict literalness in proceeding by federal prisoner against United States Board of Parole to secure his release from detention on ground that Board had revoked his conditional release from sentence without affording him local revocation hearing, where prisoner had been in custody of federal prison system from inception of litigation and had thus been operating under handicaps of such detention. Fed.Rules Civ.Proc. rule 56, 28 U.S.C.A.

Hudson v Hardy
412 F 2d 1091
Columbia CA 1968

at 1092

12. Federal Civil Procedure ⇐2531, 2547
Court's grant of jail officials' motion for dismissal or in the alternative for summary judgment in declaratory judgment action by indigent prisoner based upon officials' alleged cruel and inhuman treatment was improper where complaint stated cause of action and court failed to adequately advise prisoner of requirements of summary judgment rule and court did not grant hearing or appoint counsel for prisoner. Fed.Rules Civ.Proc. rule 56(e), 28 U.S.C.A.

The powerful importance of giving defenses to debtor prior to seizure of his properties is that Connecticut law forbids to a bank any right to the rents unless and until it can prove a deficiency between market value and mortgage. This ignorant debtor had no notice of knowledge of this and listened in disbelief while Bank secured a rent receiver and watched 10 years in horror while $1,200,000 in rents lost to him. When foreclosure started property worth double $150,000 mortgage balance

When property sold in April 1986 under gun of foreclosure sale for $840,000 $1,200,000 in rents lost altho bank had no right to the rents.

New Haven Savings Bank v General Finance
174 Conn 268
Conn Sup Ct 1978

> "A foreclosing mortgagee can obtain rents collected by a receiver only when the mortgagee can show a deficiency between the amount of the mortgage debt and the value of the mortgaged property"

CONCLUSION

May this Honorable Court summarilly reverse to allow amendment of complaint with District Court to give statement of amendments needed or alternatively note probable jurisdiction.

RESPECTFULLY:

STANLEY V. TUCKER
Petitioner

APPENDIX A- Connecticut General Statute 51-14

§ 51–14. Rules of court. Disapproval of by general assembly. Hearings

(a) The judges of the supreme court, the judges of the appellate court, and the judges of the superior court shall adopt and promulgate and may from time to time modify or repeal rules and forms regulating pleading, practice and procedure in judicial proceedings in courts in which they have the constitutional authority to make rules, for the purpose of simplifying proceedings in the courts and of promoting the speedy and efficient determination of litigation upon its merits. The rules of the appellate court shall be as consistent as feasible with the rules of the supreme court to promote uniformity in the procedure for the taking of appeals and may dispense, so far as justice to the parties will permit while affording a fair review, with the necessity of printing of records and briefs. Such rules shall not abridge, enlarge or modify any substantive right nor the jurisdiction of any of the courts. Subject to the provisions of subsection (b), such rules shall become effective on such date as the judges specify but not in any event until sixty days after such promulgation.

APPENDIX B - United States Constitutional Amendments 5th & 14th

AMENDMENT V—GRAND JURY INDICTMENT FOR CAPITAL CRIMES; DOUBLE JEOPARDY; SELF-INCRIMINATION; DUE PROCESS OF LAW; JUST COMPENSATION FOR PROPERTY

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

AMENDMENT XIV—CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Due Process Clause of Section 1 are set out in this volume and the preceding volume. See the volume containing Amendments 7 to 14 for materials pertaining to the Citizenship and Privileges and Immunities Clauses of that section and the volume containing the end of the Constitution for materials pertaining to the Equal Protection Clause of that section and sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 501. Duty of Clerks

The clerks shall see that these rules are enforced and shall promptly report any violations thereof to the court.
(P.B. 1963, Sec. 422.)

Sec. 502. Removal of Receivers

Receivers may be removed at any time, at the pleasure of the court by which they were appointed or, if such court is not in session, by a judge thereof; and, if any receiver is removed or declines to act or dies, the court that appointed him, or, if such court is not in session, a judge thereof, may fill the vacancy. (See Gen. Stat., § 52-513 and annotations.)
(P.B. 1963, Sec. 423.)

Sec. 503. Ancillary Receivers

These rules, so far as applicable, shall govern the appointment and duties of ancillary receivers.
(P.B. 1963, Sec. 424.)

Sec. 504. Receiver of Rents
(P.B. 1963, Sec. 425.)

Sec. 505. ——Applicability of Previous Sections

Sections 485 through 500 shall not apply to receivers of rents.
(P.B. 1963, Sec. 426.)

Sec. 506. ——Appointment

Every application for the appointment of a receiver of rents shall be made in or ancillary to a civil action and may be made either to the court before which such action is pending or, when the court is not in actual session, to a judge in chambers. The court or judge may examine the plaintiff or his attorney and may thereupon appoint a receiver of rents. Notice of the hearing should be given when practical but such appointment may be made without notice if sufficient cause appears.
(P.B. 1963, Sec. 427.)

Sec. 507. ——Bond

No such appointment shall become effective until the receiver shall have filed a bond in such amount as shall have been fixed at the time of his appointment or until said bond shall have been approved by the judge or clerk of the court in which the action is pending; provided that no bond need be required of a bank or trust company. The condition of bonds of such receivers shall be substantially in the following form:

The condition of this obligation is such that, whereas the above named A has by (*court or judge*) been appointed, in an action brought by X against Y, to be receiver of rents of property located in the town of and described as (*describe generally, e.g., No.* 93 *Maple Street*):

Now, therefore, if said A shall well and truly perform his duties under such appointment, then this obligation shall be void, otherwise in full force and effect.

(P.B. 1963, Sec. 428.)

Sec. 508. ——Discharge

Any party in interest may at any time move for the discharge of the receiver.

(P.B. 1963, Sec. 429.)

Sec. 509. ——Orders

The court in which the action is pending, or the appointing judge, may make such orders for the governance of the receiver as circumstances require. The judge shall certify any order passed by him in chambers to the court in which the action may be pending.

(P.B. 1963, Sec. 430.)

Sec. 510. ——Reports

Such receivers shall file written reports quarterly and at such other times as may be required.

(P.B. 1963, Sec. 431.)

APPENDIX D - Decision 2nd CA Dismissing Appeal

United States Court of Appeals

For the SEcond Circuit

TUCKER -v- CONN. NATIONAL BANK	No 88-7590 November 2, 1988

.....it is ORDERED that the motion to dismiss be and hereby is granted.....

APPENDIX E - Decision 2nd CA Denying

Motion to Certify

United States Court of Appeals

For the SEcond Circuit

TUCKER	
-v-	No 88-7590
Conn National Bank	November 2, 1988

.....It is ORDERED that the motion to certify be and hereby is denied.....

APPENDIX F - Decision USDC - Connecticut
Dismisssng Complaint

United States District Court

District of Connecticut

STANLEY V. TUCKER -v- CONN NATIONAL BANK, ET Al.	C.A. No 87-635 (AHN) RULING ON PENDING MOTIONS April 27, 1988

Stanley Tucker, pro se Plaintiff, in this USC 1983 suit challenges the constitutianality of procedures used in Conn. Superior Court for the appointment and designtion of duties of rent receivers in foreclosure action. Tucker sues various parties involved in fore closure of one of his properties. Presently before the court are defendants Rule 12(b)6 FRCP motion to dismiss and plaintiff's Rule 56 FRCP motion for summary judgment.The court grants defendants motion to dismiss in its entirety, as a consequence, plaintiff's motion for summary judgment denied as moot.

I

The complaint is inexpertly drafted, it interweavesfacts and legal argument, but when distilled sketches the following: In 1966 Hartford National Bank (HNB) predicessor to defendant Connecticut National Bank (CNB) issued a construction and permanent mortgage to plaintiff for an apartment building in Torrington, Ct. Ten years later HNB initiated a a foreclosure action against property with Neil Atlas as HNB counsel. During pendency of foreclosure suit the Ct Sup Ct appointed a rent receiver for the property. The rent receiver purportedly managed the property causing economic loss to plaintif. At some unspecified point in litigation, Defendant Bourke Spellacy & his law firm replaced

Atlas as counsel for HNB.

The complaint fails to mention the state court odyssey of the foreclosure action. In its last word on the case, the Ct Sup Ct noted, "This matter has been appealed to this court five times. The first two appeals dismissed, the next two appeals heard on the merits with decisions rendered.. prsent appeal filed Auguts 17, 1981. HNB v Tucker, 195 Conn 218, 220 n.2. Cert. Denied 474 US 845 (1985) (Tucker III). In its summary of the history of the litigation, the Tucker III court provides the facts missing from the interstices of theplaintiff's federal complaint. According to the court, the foreclosure action went to final judgmetn December 2, 1977 and the trial court ordered the sale of Tucker's property at public auction. Tucker appealed to the supreme court. but, on July 24, 1979, it concluded HNB v Tucker 178 Conn 472, cert denied 445 US 904 (1980) (Tucker I) that the superior court committed no error and remanded for the re-scheduling of public sale. Tucker III 195 Conn at 220-221.

On July 27, 1979 HNB filed a motion seeking new date for sale. On August 3, 1979 Tucker filed motion to reargue his a appeal, that motion denied Sept 19, 1979. During pendency of motion to reargue - filing of which is automatically stay enforecement of judgment-superior corut granted HNB July 27 motion and modified Dec 2, 1977 judgment to provide for public sale in October 1979. Tucker appeled from modified judgment. In HNB v Tucker 181 Conn 296 the Supreme Court set aside the modification of judgment as entered without judicial authority and remanded to trial court for scheduling of yet another public sale.
195 at 221. The trial court conducted hearing on value of premises and amount due on debt, the ordered sale October 17, 1981

Tucker's last appeal to supreme court followedshortly thereafter. Id at 221-22

Tucker contended that the superior court erred when it appointed a receiver of rents. Id at 223. The Tucker III court noted that "no appeal lies from the appointment of a receiver of rents in a foreclosure action.." and the review of the appointment "must await an appeal from the final judgment of foreclosure" Id at 223. The Court continued:

> "In this case, the receiver of rents was appointed by the court in 1976, prior to the entry of the judgment of foreclosure Dec 2, 1977. Objections Tucker may have had to the appointment of the rent receiver was raised when he appealed from the judgment of foreclosure of Dec 2, 1977. Since Tucker exercised his right to appeal from the appointment of the rent receiver, we are entitled to presume he had full opportunity to present his claims. Our trial and appellate procedures are not so unreliable that we may n not affore their complete operation any binding effect... To the contrary a final judgment commands respect US v Frady, 456 Us 152

Tucker III 195 Conn at 223 - 24

II

The Plaintiff asserts that the superior court lacked jurisdiction to adopt Conn. P.B. 504-510, the provisions governing appointment and duties of rent receivers. He also alleges that the state court violated his due process rights because 504-510 allegedly do not give notice of defenses nor provide for a "meaningful hearing" where a property owner can challenge the appointment of a receiver. Complaint Para 11. Tucker further alleges the challenged provisions are vague and fail to set forth standards that will

Note - footnotes ommitted.

guide a superior court judge in making such appointment. Be way of relief he seeks a declaratory judgment voiding S 504 510. He also seeks various damages stemming from the depressed rental income and market value of his property; punitive damages; attorneys fees; interest; and costs.

The defendants argue that Tucker is in reality seeking review of the state court judgments and those matters are res judicata before this court. They also argue that plaintiff is collaterally estopped from raising a constitutional challenge to P.B. 504-510 because that issue could have been raised at various intervals in the protracted history of the state court litigation.

III

The Court relies on a persuasive authority from this District in granting the defendants' motion to dismiss. Tucker v Northeast, CA H 87 282(PCD) a case involving Tucker and essencially same issues raised in this adtion, Judge Peter Dorsey found that Tucker's suit was

> no less an attempt to convert an appeal of a state court judgment into a 1983 cause of action. The portions of the complaint which allege plaintiff was deprived of property without due process of law by defendants application of rent receiver procedures of P.B. 504-510 in the state foreclosure proceedings must be dismissed for lack of subject matter jurisdiction.

Id at 8-9 In Northeast Tucker sued corporate successor to the bank that had filed foreclosure actions against four of Tucker properties. He also sued the purchasers of the foreclosed properties and the attorney who had represented bank in foreclosure. Id at 1. Citing District of Columbia Court of Appeals v Feldman 460 US 462 and

Rooker v Fidelity Trust 263 US 413. Judge Dorsy found that a federal district court lacks subject matter jurisdiction to review the final judgment of a state court. Northeast slip op at 5-6. Such review may only be had in the Supreme Court of the United States"Id at 6 See also Sam & Mary Housing Corp v New york 632 F Supp 1448 Judge Dorsey noted that Tucker had raised constitutional due process challenges to P B 504-510 in his appeal from trial court's entry of judgments of strict foreclosure. Id at 3 HFS & L v Tucker, 196 Conn 172, 177/ Cert denied 474 US 920. Because the Ct Sup Ct had determined that Tucker's due process rights were not violated, Judge Dorsey concluded that federal relief sought by Tucker could be awarded only if a federal court found that the state tribunal was wrong. "That this court is without jurisdiction to do" Northeast slip op at 8 (citing Pennzoil Co v Texaco__ US __ 1987.

In the instant case, Tucker also seeks to relitigate state proceedings by naming CNB and its counsel in the foreclosure matters as federal defendants. Though it appears that Tucker did not raise a direct constitutional challenge to P.B. 504 510 during the life span of the state court case, there is nothing before this court to indicate that Tucker was precluded from doing so. As the Conn Sup Ct noted Tucker III - Tucker has "full opportunity to present his claims" during the appellate process. 195 Conn at 224, Moreover Tucker's failure to raise his constitutional challenges in state court does not permit him to raise them now in federal corut. District of Columbia Court of Appeals 460 US at 484 n 16. Thus those portions of the complaint supporting Tucker's claim for relief from the effect

of the state court judgments must be dismissed for lack of subject matter jurisdiction.

In addition to allegations directed at the state court foreclosure action, Tucker also challenges the facial validity of S 504 -510. He alleges that the application of the rent receiver provisions deprives property owners of federally=protected due process rights. Complaint P 10-14. In contrast to federal suits seeking review of state court final judgments, general chall enge to the constitutionality of state laws are within the subject matter jurisdiction of federal courts. District of Columbia Court of Appeals 46o US at 483-84. See also Northeast Savings Slip op at 9. Thus though this court lacks the power to review the state court foreclosure judgment against Tucker, it does possess jurisdiction to address plaintiff's constitutional challenge to Connecticut's rent receiver regulation.

Tucker's request for declaratory relief must fail, however, because the plaintiff lacks standing to seek such relief. Each of his alleged injuries emanates from the state corut proceeding and the purported errors committed therein. "It is elementary that a litigant is not entitled to have a court decide the merits of an issue he raises unless he can show some basis for arguing that the challenged action has caused him a cognizable injury" ASso Against Discrimination in Employment v Bridgeport, 710 F 2d 69, 73. Citing Simon v E Kentucky Welfare Rights 426 US 26, 41. Tucker has fully litigated the foreclosure matter in the state court and has unsuccessfully sought review in the U.S.Supreme Ct. Because the state court foreclosure action

is not reviewable by this court, and because cause there is no allegation that prospective application of S 504-510 will cause the plaintiff redressable harm, Tucker lacks the "distinct and pappable injury"that is a necessary underpinning for standing to pursue a facial challenge to the rent receiver procedures. 106 Mile Transport Associates v Koch, 656 F Supp 1474, 1480 quoting Allen v Wright 468 US 737, 752 1984

CONCLUSION

For the foregoing reasons, the court grants in it entirely the defendant's Rule 12(b) 6 FRCP motion to dismiss. As a result the plaintiff's Rule 56, FRCP, motion for summary judgment is denied as moot.

SO ORDERED this 27th day of April 1988 at Hartford, Connecticut.

s/

ALAN H NEVAS
Judge USDC

Note - Footnotes ommitted.